

49-432. Authority of secretary and department personnel to enter property for certain purposes; entry construed as exercise of police power; studies, exploratory work. (a) If the secretary makes a finding of fact that:

(1) Land or water resources have been adversely affected by past coal mining practices;

(2) the adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control or prevent should be taken;

(3) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control or prevent the adverse effects of past coal mining practices are not known or readily available; or

(4) the owners will not give permission for the secretary, or the agents, employees or contractors of the department to enter upon such property to restore, reclaim, abate, control or prevent the adverse effects of past coal mining practices; then, upon giving notice by mail to the owners, if known, or if not known, by posting notice upon the premises and advertising once in a newspaper of general circulation in the county in which the land is located, the secretary and the agents, employees or contractors of the department shall have the right to enter upon the property adversely affected by past coal mining practices and any other property to have access to such property to do all things necessary or expedient to restore, reclaim, abate, control or prevent the adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon.

(b) The secretary and the agents, employees or contractors of the department, pursuant to an approved state program, shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety and general welfare and shall not be construed as an act of condemnation of property nor trespass thereon.

History: L. 1982, ch. 226, § 2; L. 1988, ch. 192, § 31; July 1.